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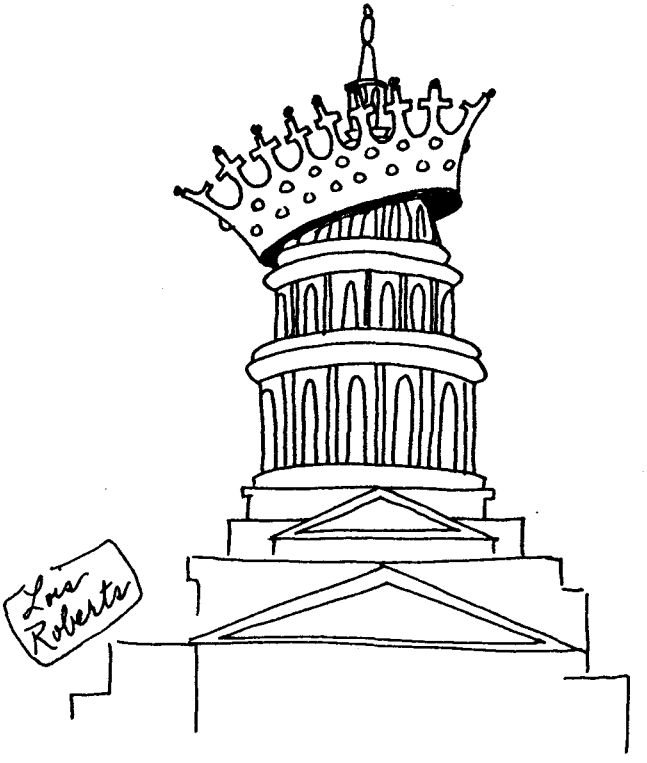
VIEWS




# John Locke, the Draft, and the Divine Right of Kings

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There are two ways to form an army: by compulsion —the draft; and by voluntarism—a volunteer armed force. Ever since the founding of the republic, both these methods have been used in the United States. A government founded on the revolutionary principle that governments should operate ultimately through the consent of the governed has never been able to make up its mind whether to compel men to defend it, or to leave that to free choice.

Recruitment by free choice predominated until World War II. Though it is true that most of the colonies had draft laws on their books (Pennsylvania included a draft in its 1776 constitution), the draft was not of much consequence in the Revolutionary War. Nor was it in the Civil War—not militarily—though use of conscription created political division and even violence both in North and South. Our participation in World War I was brief: the draft came and went in two years. It was not around long enough to imbed itself in American life—but it set the precedent that would be followed in the next war.

World War II saw the beginning of something new. From then to now, except for a period of little over a year in the late forties, there has been a draft. As L. Mendel Rivers, Chairman of the House Armed Services Committee, pointed out in the Committee's 1966 hearings on the draft, "we have literally raised a generation of Americans under the Selective Service System."

For the first time in history, forced military service has now been institutionalized in the United States. It is thought of less and less as a temporary necessary evil that can *only* be put up with because it is temporary. More and more, legislators and administration spokesmen view the



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draft as a permanent institution. Until World War II, Americans thought of peacetime conscription as a European institution. It was particularly associated with France, Prussia, and Czarist (and later Soviet) Russia. One of the prime reasons for the flood of immigrants to the United States during the late nineteenth and early twentieth centuries was to escape this dreaded institution.

We cannot postpone making up our minds about conscription forever. If we do, history will decide for us, and we will have a conscript state by default. We must decide just how basic individual rights will be in the United States of the future. On this issue, we are not standing still; we cannot have rights *and* conscription. We either move further toward compulsion, or we move toward recognizing the right of choice.

Today, in large measure because of the draft, we are moving toward an entire society based on compulsion. Today, when we violate the individual rights of young men through the draft, we are laying the foundations for a future in which every man's rights (and every woman's) will be violated as a matter of course, by custom and by law. A volunteer armed force is not a dangerous luxury; it would not, as L. Mendel Rivers put it in 1966, jeopardize "our national security and in turn, our precious heritage of freedom." On the contrary, the existence of such a force is a necessity if we are to be a free society. That is, a society which recognizes individual rights.

We all have a common-sense notion of what rights are. Rights involve being allowed to do what you want, when you want; provided you don't attack other people or other people's property. Under a

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government based on rights, the individual citizen is left alone to make a living, or to express ideas, or to invent, or to found a business, or, as a prime document of the United States puts it, to engage in the "pursuit of happiness."

But "rights" is a political term, and the common-sense usage is only a reflection of complex ideas, ideas which were very consciously in the minds of the founders of the country. If any one man is philosophically the father of the United States, that man is the seventeenth-century English philosopher John Locke. Locke's influence is most strikingly seen, perhaps, in the Declation of Independence (its author, Thomas Jefferson, was a student of Locke's political philosophy), but virtually all of the delegates to the constitutional convention were so well acquainted with Locke's ideas that they were provided with a common philosophical base which enabled them to agree on a basic and complex document in the short space of one summer. There was virtual unanimity on the meaning of rights and on their necessity to man, and therefore on the principle that the purpose of government was to protect rights. This was the animating principle behind the main articles and sections of the Constitution; this was the explicit reason that James Madison gave for insisting that if there was to be a Bill of Rights there must also be a provision stating that the people retained rights which were not enumerated in it—the Ninth Amendment in the Bill of Rights. The United States was not to be a tyranny. All forms of governmental violation of the rights of man were to be left behind in Europe.

Locke's view of the nature of rights represented a complete reversal of the view of the proper relationship of the state to its citizens which had

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prevailed until his time. For Locke, the rights of man precede government rather than being derived from it. Locke's major political work was *Two Treatises of Government*, considered for some time by scholars as having been written to justify Great Britain's "Glorious Revolution" of 1688. Recent scholarship, as well as the discovery of Locke's own annotated copy of the work in the Cambridge University library, now indicates that the work was begun as early as 1679, thus making it a cause of the Revolution in England, not an *ex post facto* justification of it. It is also now held by the British scholar, Peter Laslett, that the second treatise, the famous *Of Civil Government*, was in fact written first, and that the whole work was primarily intended as a refutation of the work of Sir Robert Filmer. Filmer had justified patriarchal kingship by quoting from the Bible, and had specifically denied the growing intellectual assumption that men were free and equal. Laslett considers that Locke formulated his theory of property in response to this. "It may well be," he writes in his long Introduction to the Cambridge University Press edition of *Two Treatises of Government*, "that some of Locke's arguments would never have been developed at all if it had not been for Filmer. We have seen that he showed no sign of an interest in the theory of property before he sat down to his polemic and found himself faced with an argument in favor of primitive communism which was very difficult to refute unless a new justification of ownership was devised." The result was, says Laslett, a book that "was at once a response to a particular political situation and a statement of universal principle, made as such and still read as such."

Filmer advocated "primitive communism" combined with the so-called Divine Right of Kings—he advocated

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a patriarchal state in which the monarch was all-powerful and controlled his people absolutely, while he doled out benefits to all. If one substitutes for the single monarch of Filmer the modern semi-anonymous bureaucracy, one can see points in common between this theory and the implicit view of many who support the draft—that the state is the great benefactor, whose motives and powers are therefore not to be questioned.

In chapter two of Locke's *Of Civil Government*, he declares that the "State all Men are naturally in ...is a *State of perfect Freedom* to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man." Further in the same chapter he says, "The *State of Nature* has a Law of Nature to govern it, which obliges everyone: And Reason, which is that Law, teaches all Mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his Life, Health, Liberty, or Possessions."

He is undeviating in this view that man, each individual man, has an unequivocal right to himself. In chapter five he states, "...every Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his."

Thus he sets up the essence of man's relationship to man. It is natural for man to own himself, to possess, to be free. This is his state in nature but, as he says, "In the state of nature there are many things found wanting." Each man must be his own government, must judge and punish. Too easily this leads to one man harming another.

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Hence, he reasons, there is a proper role for government. In chapter nine he declares that in this state of nature man "is very unsafe, very insecure. This makes him willing to quit a Condition, which however free, is full of fears and continual dangers...he seeks out, and is willing to joyn in Society with others...for the mutual *Preservation* of their Lives, Liberties and Estates..."

But not just any society will do. Locke calls for government established by the consent of the governed, which is ruled by the majority in order to preserve these rights. He rejects the absolute state, as not being based on the consent of the governed. Men do not willingly choose "to be devoured by *Lions*."

This rule by the majority, which is to be based in an elective process, has limits, very definite limits. "Government has no other end but the preservation of property." By "property" he means not only possessions but life and liberty as well. Quite clearly, for Locke this means that majorities may not act like "*Lions*"; they may not act to devour those whom they govern. On the contrary, the purpose of civil government is to create a society that is secure and safe, where "Men... joyn and unite into a Community, for their comfortable, safe, and peaceful living one amongst another, in a secure Enjoyment of their Properties..."

The key term in the Lockean notion of the state is that its purpose is the "preservation" of rights naturally belonging to man. This is the meaning behind the phrase in the preamble to the Constitution that one of the purposes of that constitution was to "secure the Blessings of Liberty to

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ourselves and our Posterity." There is a total denial here, and in all of the Lockean approach, of the idea that governments are the source of rights and may therefore at will change the nature of rights. Rights are prior to governments, the safeguarding of rights is the purpose of proper government, not the granting of privileges.

Thus did John Locke brilliantly overturn the notion that man was the servant and property of the state. Man has a nature and it is that nature that government must serve. That nature requires freedom: the right to life, liberty and property. "No man in Civil Society can be exempted from the Laws of it," says John Locke, and that includes officials of the government. There can be no such thing as a "right" by government to violate rights.

Yet in effect that is what the government is trying to do when it sets up compulsory military service. For a man to live at all he must have a right to his life. Yet now the government can seize him against his will and risk that life at its will. For a man to live in accord with his nature as a thinking being, he must have the liberty to think and act freely on the basis of that thought as long as he respects the rights of others. Yet the draft allows no liberty of action, it takes men when the government wills and they do what it wills. For a man to live for any length of time, he must own his own labor and keep the products of it. Yet through the draft, the government seizes that labor and claims that it cannot afford to pay what its citizens would for comparable work.

Whatever else the government is doing when it drafts, it is not acting for the"preservation of...Lives, Liberties, and Estates." What the

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draft represents is a reversion to the old view that man is owned by the state and governed by the state's will. This can only be justified by the philosophy of government that Locke was at such pains to refute.

Whether one reasons from John Locke's position, or simply from common sense, the draft violates the rights of man. In a nation set up to embody those very same rights, the first nation in history to do so, this is a grave charge. The fact that both John Locke and the Founding Fathers violated their own basic principles by countenancing the continued existence of slavery in the American colonies is no reason that other violations of rights should be sanctioned. Slavery has long since been repudiated, by principled men who insisted that it was the grossest injustice to be born subject to involuntary servitude. The Negro need no longer be a slave just because he was born a Negro. Must a man still be a soldier, just because he was born a man?

The answer given to that question is really no answer at all. It is, in essence, "The draft isn't un-American, because the Department of Defense says we need an army." L. Mendel Rivers in the 1966 House Hearings said that, "For a nation whose traditions and philosophy are predicated on the concept of individual freedom and liberty, a law conscripting manpower must necessarily always be unpalatable." He then proceeded to say that it was necessary. Here he simultaneously recognizes and ignores the contradiction of the draft, the contradiction that men must enslave one another in order to be free.

Statement after statement both in the 1966 and the

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1967 Hearings of the House Armed Services Committee on Selective Service reflected this same contradiction. It was repeatedly admitted, in effect, that the draft violated individual rights, but was necessary in order to preserve those same rights.

However, the law itself attempts to invoke the contradiction even more blatantly. The law admits the prior rights of man in its very provisions while setting up the institutionalization of the violation of those very rights.

This admission lies in the concept, codified in law, of conscientious objection. Pause and consider this anomaly, that in a law asserting the universal military obligation of all, some are exempted by reason of the opinions they hold as to the nature of the universe, the existence of deity, and the supposed dictates of this belief with respect to the waging of war.

As the law now reads it does not "require any person to be subject to combatant training and service in the Armed Forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form, but no person so exempted shall be exempted from service in the Armed Forces in any capacity that the President shall declare to be noncombatant. Any person found...to be conscientiously opposed to both combatant and noncombatant training and service may immediately upon induction into the Armed Forces, be furloughed...to perform twenty-four months of civilian service contributing to the maintenance of the national health, safety or interest..."

On the basis of what political principle can one

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grant that a person's deep convictions determine his availability for compulsory military service? Only on the basis of the primacy of man's rights, specifically his right to think and to act on his convictions.

On what basis can a government require that a man surrender life, liberty and property at the government's will to serve the government's purposes? On the basis of the political principle that government should be a patriarch which cares for those whom it coerces.

Both of these principles are invoked by the same act of legislation. There is no reason in principle why conscientious objectors may be excluded from combatant training and service while other young men of equally deep nonreligious conviction must accept such training and its ultimate danger to life and health.

Once a person grants the rightness of conscientious objection, there is no argument which that person can muster to justify the draft in principle.

So the present dialogue between the proponents of compulsion and the proponents of voluntarism is embodied in the draft law itself.

Unfortunately, the draft is not some small unpleasant political sickness that can be isolated from the rest of the body politic, an illness to be admitted and deplored but having little effect on the body as a whole. Once you violate rights in one place it becomes epidemic. Once the individuals of one group have their liberties systematically violated by the law of the land, there is precedent by which to seek the violation of every

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man's liberty. Notice that sign of the totalitarian state, the card of identity, which has been planted as a seemingly minor accompaniment to the draft in the requirement that each draft registrant must carry his draft card. What's more, he must notify his board of changes of address, changes in status, and even, if the law is read strictly (according to some lawyers), must carry the card after he is classified 5A as "too old to serve." The whole idea of having to carry identification papers of any sort is contrary to American tradition and principles. But so is the draft, and one thing leads to another.

Something else new is being added to political discourse in America, something as new, and as foreign, as the idea that men must carry cards of identity.

It is not done openly. Politicians do not name the spread of tyranny for what it is. Often they do not fully recognize it themselves—they merely have no articulate arguments against it. They respond to a symbol which conceals the true nature of their acts, both from themselves and from the public, some ideal which covers the act by justifying it.

In the case of the *military* draft the ideal is national security. This is at least somewhat definable. Separated from the draft, it is a proper purpose of government—a purpose, by the way, which can be readily achieved with a fully volunteer armed force, as I have attempted to show in other articles.

But there is another ideal, not so definable, and not defined, which is called upon to justify the draft; and further, to justify other kinds of

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forced service, service encompassing whole fields outside of the military such as charity, hospital work, overseas service, education, land improvement, reforestation, and domestic police work.

This ideal comes up again and again, an incantation of supposed necessity. It is the ideal of a "democratic" society. Let us start with the testimony of General Lewis B. Hershey, Director of the Selective Service System for more than a generation. For him, the draft has far more than military possibilities. In his hands it is a tool for shaping the lives of the nation's young men. In his own words, "the selective service system has been what we call a channeler." Through the application of the threat of being drafted "we have channeled people into training for professions and occupations...necessary for national life." At the 1966 House Hearings he proudly cited figures which he said bore out the wisdom of this purpose of the draft. He talked of thousands of physicians, doctors of philosophy, teachers, and engineers which "the nation produced." Presumably these multitudes of individuals would not on their own have chosen these professions had not the fear of the draft, of government power, urged them to their choices.

But why? What is the ideal in General Hershey's mind that requires the massive use of fear as official government policy? General Hershey is not a theoretician. But no man can sit for hours, as he did at the 1966-67 House Hearings on the draft, and not show at least a hint of political theory. It can be no surprise to anyone that General Hershey believes in the draft. In fact it should not be a surprise to learn that he advocates the spread of military training as univer-

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sally as possible. He would hardly have held the job he has for all these years if he didn't have such belief...but why does he believe?

A particular term came up in his testimony a few times. Each time, it formed the core of his justification of the draft. Advocating not only the present draft but its extension to include as many men as possible, he said, "You are not going to have a *democracy* when not more than 20 or 30 per cent of the individuals can carry the responsibilities." [Italics mine] Thus he called for the armed forces to be used to "uplift the citizenry." With respect to those individuals who are rejected for educational, moral, and relatively minor physical reasons, he stated in the 1966-67 Hearings that the incentives for them not to improve themselves to the point where they would be acceptable by the military were too great. They must be *made* to improve themselves. If they don't, "it means avoidance of a duty that a person in a *democratic* society owes." [Italics mine]

From his own words one can get a dim idea of what he means by "democracy" or "democratic." He means a society in which everyone has a potential obligation to do the things the duly elected representatives of all the people think ought to be done for the good of all the people. It is obvious that all the people must be defended. So, in his words at the hearings, "We got to make men better so they can defend us."

Why can't we depend upon a free labor market for these men? It wouldn't be evenly enough spread, it wouldn't involve everyone. He doesn't want the economic principle of the division of labor to apply. "We must never get ourselves to the place

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where only the few serve the many," he stated, and did not go on to say why. Only a "few" physicians serve the "many," only a "few" teachers, policemen, engineers, industrialists, business executives, serve the "many." A free society's economy depends upon minorities of productive specialists. That is one of the reasons for its seemingly unlimited productivity. All of this General Hershey ignores.

It is my guess that General Hershey believes that the division of labor not only should not but in fact cannot apply to the military profession. This is an ironic twist from a man whose entire adult life has been in the military. He doesn't seem to believe that free men would choose the military as a career. "If you give everybody their individual rights you won't send anybody into the Armed Forces."

Let us go to the opposite extreme, to a professional academician who, like Hershey, embraces compulsion as politically good.

That man is Morris Janowitz. Professor of sociology at the University of Chicago, he has written several works on the military. In an article, "American Military Service," in the March 1967 *Trans-Action*, he proposed an alternative to the selective service system which he believed "to be more compatible with the needs and goals of political democracy."

In his opinion the present draft results in the "lower classes" having "higher casualties." On the other hand, a volunteer system would mean that the more disadvantaged would tend to join the military to improve themselves and this would

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result in a social inequity also, particularly with respect to Negroes, who he asserts might well entirely fill the ranks of a volunteer army.

For him, a very important value in a society is homogeneity. Everyone must do everything. And so he calls for national service for men and women, a mixed system of forced and voluntary service. Under government compulsion and/or urging all youths would go into the military, the police cadet corps, the national teacher corps, the national health corps, VISTA, and the Peace Corps. He would have a 400,000-man National Job Training corps which would be a substitute for military service.

In the second session of the 89th Congress, Senator Jacob K. Javits (R.,N.Y.), offered a resolution calling for a program of universal national service very much like that of Professor Janowitz's except that he calls unequivocally for every young male to be compelled to serve either "militarily or non-militarily." At the 1966-67 Hearings he stated that as of now "the law falls far short of universality." Like Hershey and Janowitz, the Senator is disturbed by present inequity in which only some are forced to serve. So the answer, the way to make it democratic, is to use force against all.

The Senator, like Hershey and Janowitz, claims that only force can adequately shape the citizenry. In the Hearings, General Hershey repeatedly called for the use of forced military service to "raise the quality of our citizenry educationally, physically and particularly morally." Janowitz shows a fear of individuals being left on their own. Force must be used to counter this. Nation-

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al service should be "designed to develop intense and close group solidarity, based on collective rather than individualistic goals."

Senator Javits holds that his proposed universal forced service is a means to "equip our youth of today for the challenge of tomorrow."

All three agree on the same general principle: it is both proper and necessary for the state to shape citizens by forcing them to do things for the good of the community that they otherwise would not choose to do.

If one reads the remarks of these men (and the many others both in and out of government who have come out with variants on these proposals) one can notice an interesting tone. It is that of a father about his children. Equip our youth, give them goals, shape up the ignorant and unruly. These are all fatherly worries, and yet these gentlemen make them governmental.

Can it be that after almost three centuries we are back again with the Divine Right of Kings? General Hershey has said: "What I'm proposing isn't like Hitler. If this country decided to do this kind of thing, it would be the people who decided to do it, and not some dictator." But isn't he saying that, collectively, the people *are* the King, and have therefore not only the power (like Hitler) but the justification to do anything at all to each other—as long as it's supposed to be beneficial to the country?

If ever there should be a dead issue in America, this is it, and yet here it stands. Of course, here there is no king. But substitute the word

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"government" for "king" and substitute the word "democratic" for "divine" and you have the idea in modern American dress, the Democratic Right of Governments in which the endowment of power is not from God but from the "people." As they say, *Vox populi, Vox Dei.*

How does this really differ from Sir Robert Filmer's formulation justifying the absolute power of the king? On the basis of a tortuous theological citation and interpretation he "proved" that since those who bore children gave them life from God and for this reason owned those children, in the same manner a king (ultimately descended from Adam) owned his "children," the people in his kingdom. This meant that the king had a responsibility to God, to take care of his children for their good, and that here on earth he, the king, was judge of this; the "children" could not know what was good for them and so should bow to royal power. As James II of England said, "The king is from God, and law is from the king." Thus "rights" were really privileges granted by the king. That meant that for Filmer government antecedes rights.

But we have come full circle, for, as we have already seen, it was this position that John Locke challenged in his *Two Treatises of Government.*

The original actors may be long since dead, but the dialogue has not ended. The terms have been changed, but this "new" argument which declares that the state must use force against its own citizens to benefit those same citizens is but divine right, thinly disguised.

Are we going to abandon our tradition of individual rights? To understand the immediate implica-

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tions of such suggestions, each individual might ask himself the following questions:

Have I chosen the things I most value, or was it necessary for some government official to come to me and force me to have the values I now have?

Do I believe that I would not have become human unless the government had made me so?

Do I want someone to come to me and force me to take certain training in order for me to be equipped to live tomorrow?

Many more such questions could be asked. I ask these to bring out one fact. When these generals, professors and senators, and the too many others like them, talk about the necessity of forcing citizens to serve, they are talking about the individual , either actually or potentially. They are telling him that he will not defend himself, will not equip himself for tomorrow, will chose values inimical to others. And they have to hold this view, because they have to have an intellectual position that justifies the draft. According to the theory of the Democratic Right of Governments, the people delegate, not the protection of their rights, but unlimited, absolute power to their representatives to do anything that needs to be done. Congress can pass, and the Executive can carry out, anything that the people will put up with. They can shape citizens so that they have the proper values, they can force them to do good things that would not otherwise be done. The citizen learns, serves—and is drafted.

And it is only right that it should be so—once

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you grant the propriety of any form of conscription.

If, on the other hand, one is against universal compulsory service, one cannot consistently be for a military draft in any form, in any degree, under any circumstances.

Why is anyone for it? For a variety of reasons: indifference to philosophical issues, fear of communism, desire for power—the reasons can be relatively innocent or deeply suspect. But the fact remains that men *do* have rights, and effective performance is reduced to the extent that they cannot exercise their rights. A free society is, as John Locke maintained, the only moral form of government—it is also the most practical form of government.

This means that if this is ever to be a free society fully based on individual rights, then that society must defend itself by means of a fully voluntary armed force.

After all, there is only one alternative to freedom.

*--David J. Dawson*

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# FAREWELL

# TO OUR READERS

During the Goldwater campaign of 1964, six members of the Metropolitan Young Republican Club decided that they would like to start a publication. For an initial investment of $8.00 of their own money, they wrote and mimeographed the first issue of what was then called *Views, Reviews and Persuasion*. Copies were sold at club meetings, enough to finance a second issue which appeared two weeks later and was similarly distributed. It was only with the third issue that subscriptions began to be accepted.

From this modest beginning, *Persuasion* has continued to grow. It became a corporation, with the initial staff as stockholders, in 1965. Its format changed from mimeograph to multilith in 1966, and to a more conventional shape in 1967. During all this time, rising subscription revenues were put back into the improvement of the publication —all the editorial and production work (as



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well as much of the writing) continued to be done as a labor of love by the original founders.

We are proud to say that *Persuasion* has attracted and published many other writers besides ourselves. We are proud to say that it now has subscribers in every state except Hawaii, as well as in England, Denmark, Argentina, Germany, Japan, and Australia.

But despite this growth, the time has come to say good-bye. This is the last issue of this magazine that will appear, and the unexpired portions of subscriptions will be refunded. We, the staff of *Persuasion*, all have our own separate careers, and we find that we no longer can give *Persuasion* the time and attention it deserves. All of us feel we have learned a great deal from this experience, and although the magazine may be no more, we will keep an attitude toward politics that this work has given us for the rest of our lives.

We hope something of this will remain with our readers. To all of you, good-bye, and thank you for your support.

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